

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**D. MARIA SCHMIDT, as the Personal Representative of the
Wrongful Death Estate of RUBEN GUERRA GUINONES, Deceased,**

Plaintiff,

v.

Case No. 18-cv-321

NAVISTAR, INC.,

Defendant.

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (DIVERSITY)

Navistar, Inc. submits this timely-filed Notice of Removal pursuant to 28 U.S.C. §§ 1332 and 1441 *et seq.*, and in support hereof states as follows:

A. Background

1. Plaintiffs filed her Complaint on March 2, 2018, in the First Judicial District of the State of New Mexico, County of Santa Fe, Case No. D-101-CV-2018-00645. That Complaint named only Navistar as a defendant, and Navistar's agent for service of process was served via process server with the Complaint on March 6, 2018. A copy of all process, pleadings, and orders served upon Navistar from Case No. D-101-CV-2018-00645 is attached as **Exhibit A1**. Additional filings on the State Court's docket are attached as **Exhibit A2** to satisfy D.N.M.LR-Civ. 81.1(a). In the event Exhibits A1 and A2 together do not comply with D.N.M.LR-Civ. 81.1(a), Navistar will satisfy the requirements of that local rule within the twenty-eight day period provided by the rule.

2. According to Plaintiff's Complaint at ¶ 1, Plaintiff Maria Schmidt is the Personal Representative of the Estate of Ruben Guerra Guinones and resides in Santa Fe, NM.

3. Navistar is a Delaware corporation with its principal place of business in Illinois, and is thus a citizen of Delaware or Illinois for diversity purposes. 28 U.S.C. § 1332(c)(1).

B. Grounds for Removal

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a). Removal of this action is proper pursuant to 28 U.S.C. § 1441(a). This is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. This is a product liability action in which Plaintiff claims damages for a death arising out of a vehicle accident. Ex. A, Plaintiff's Complaint ¶¶ 10, 12.

In determining the amount in controversy, the Court should look to the "allegations of the complaint, or, where they are not dispositive, by the allegations of the notice of removal." *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995). "A defendant (like a plaintiff) is entitled to stay in federal court unless it is 'legally certain' that less than \$75,000 is at stake." *McPhail v. Deere & Co.*, 529 F.3d 947 (10th Cir. 2008). The Court may look to the substance and nature of the injuries and damages described in the pleadings. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882-83 (5th Cir. 2000). In this type of product liability case involving alleged death (Ex. A ¶ 10), the amount in controversy exceeds \$75,000.00. Thus, Navistar affirmatively states that the amount in controversy exceeds \$75,000.00, a statement which Plaintiff surely will not dispute.

2. For purposes of federal diversity jurisdiction, the parties have the citizenships set forth above in Paragraphs A(2) through A(3). This case is removable because it is an action between "citizens of different States." 28 U.S.C. § 1332(a)(1). Moreover, "none of the parties in interest

properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b) (emphasis added).

4. This Notice of Removal is timely, as it is filed within thirty (30) days of service of process upon Navistar of the Complaint. 28 U.S.C. § 1446(b)(1).


5. A copy of this Notice of Removal is being filed with the Clerk of the First Judicial District of the State of New Mexico, County of Santa Fe.

6. A Civil Cover Sheet for this matter is attached as **Exhibit B**.

7. Navistar demands that the trial of this matter in federal court be heard by a full jury.

WHEREFORE, Navistar, Inc. requests that the action now pending in the First Judicial District of the State of New Mexico, County of Santa Fe, as Case No. D-101-CV-2018-00645, be removed from that state court to this United States District Court.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of April, 2018, I filed this pleading electronically and caused service to counsel of record as follows:

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